

**STATE LAND DEPARTMENT
STATE OF ARIZONA**

WATER AGREEMENT

Agreement No. 21-102153-Superior 142

This Agreement between the State Land Department of the State of Arizona, acting through the Arizona State Land Commissioner (hereinafter called the "Department") and

CYPRUS BAGDAD COPPER CORPORATION, a Delaware corporation

(herein after called "Buyer") is made this 28th day of July, 1998.

The Buyer and the Department hereby agree as follows:

1. That the Department does hereby convey to Buyer the right to WATER from the lands described in Appendix A attached hereto, (hereinafter called "Premises") for the term and in consideration of rents and/or payments as set forth herein and compliance by Buyer with provisions of the Groundwater Management Act (if applicable), with the covenants and conditions contained herein which Buyer hereby agrees to faithfully keep and perform, and with the terms set forth in the Notice of Sale published on May 14, 1998 in regard to the public auction of water held on July 28, 1998. If there is any conflict or inconsistency between the terms and provisions contained herein and the terms of public auction No. 21-102153, the terms of the public auction shall prevail.

2. **TERM AND AGREEMENT**

From the date hereof and until the 27th day of July, 2008, the Buyer shall have the right to extract, use, store, remove and dispose of the water found in the subsurface of the Premises.

3. USE OF PREMISES

A. Buyer shall, within 30 days from the date of this Agreement, apply for the proper surface lease, easement or permit allowing Buyer the right to use as much of the surface of the Premises as is reasonably necessary for the extraction, use, storage, removal and disposition of the water together with the right of ingress to and egress from the Premises across other State lands along designated routes previously approved by the Department and necessary to carry out the purpose of this Agreement. Buyer shall not extract water prior to obtaining the necessary surface lease, easement or permit from the Department. Buyer shall also be responsible for reimbursing any prior lessees for reimbursable improvements subject to Title 37 of the Arizona Revised Statutes.

B. No reimbursable improvements shall be authorized or recognized by the Department no matter by whom or for what purpose constructed insofar as the Buyer of this Agreement is concerned. Nothing in this provision, however, shall interfere with any rights to reimbursement for improvements which Buyer might have by virtue of its status as a lessee of the Department. Conditions for removal of improvements shall be covered under the surface lease, easement or permit.

C. Buyer may use, with predetermined rental, any and all improvements existing on the Premises and not removed or to be removed by a prior maker or predecessor of such improvements which are owned by the Department. The nature and extent of existing state-owned improvements on the Premises shall be determined by inventories or reports thereof in the files of the Department, including the Department's inspection and reports of the Premises after removal of improvements by a prior lessee, permittee or buyer.

4. USE AND OCCUPANCY

No one other than the servants, employees, officers of Buyer, or approved sub-contractors of the Department shall have the right to enter upon the Premises to use, extract, store, remove or dispose of the water therefrom. Buyer may assign its interest herein only with the prior written approval of the Department.

5. CONDUCT OF OPERATIONS

Buyer hereby agrees to conduct its operations on the Premises in a workmanlike manner at all times, and to protect the Premises and soils thereof.

6. RENTS AND PAYMENTS

A. In addition to the payments hereinafter provided, Buyer agrees to pay the Department annually in advance the sum of \$ N/A for rental of existing state-owned improvements on the Premises as described in Appendix A attached.

B. The Department offered the right to use water at public auction on the basis of a minimum advance payment of \$ 6,000.00 per year for the extraction of 80 acre feet of water per year for 10 years, and a minimum payment per acre foot of water as follows:

Buyer bid an advance payment of \$ 6,000.00 per year
(\$ 75.00 per acre foot) and Buyer agrees to pay annually in advance.

The Department and Buyer agree that the advance payments shall be first credit for Buyer against payments due from Buyer for water used or removed, and that the entire portion of the advance payments unused upon the termination or expiration of this Agreement shall be the sole property of the Department. Buyer agrees that the advance payments shall be paid each year regardless of use or removal of water.

C. Non-use of water during any year of this Agreement shall not entitle the Buyer to develop any credits for the succeeding year. Buyer has bid and agrees to pay the Department \$ 75.00 per acre foot for each additional acre foot of water withdrawn over the minimum amount. In no event shall the annual withdrawal exceed 160 acre feet.

7. REAPPRAISAL

The Department may reappraise the value of the water sold under this agreement pursuant to Arizona Administrative Code Rule 12-5-2007(F) or any applicable successor rule.

8. RELATED EXPENSES

There shall be a charge to the Buyer to cover contract administration/sales related expenses. This charge will be assessed pursuant to Arizona Administrative Code Rule 12-5-2007(G)(2) or any applicable successor rule.

9. WATER RECORDS METERING AND PRODUCTION REPORTING

A. Prior to the extraction of water, the Buyer shall install a metering device at the well head of each well or at a location other than the well head if approved by the Department. Metering devices must meet the approval of the Department prior to installation, and shall be accessible for inspection by agents, employees or officers of the Department during reasonable hours.

B. Buyer shall keep accurate books and records showing all water extracted from Premises. The Department shall have the right to examine such books and records of Buyer during reasonable business hours, and Buyer shall maintain all such books and records for one (1) year after termination of this Agreement.

C. On or before the 15th day following each full month of this Agreement, Buyer will report to the Department the total quantities in gallons or acre feet (325,851 gallons) of water extracted from

the Premises during that immediately previous full month; such report shall be made irrespective of water use or extraction. At any time the minimum number of acre feet purchased is exceeded, the Department shall compute the payment due from Buyer and such payment shall be due and payable within thirty (30) days of the mailing of the statement by the Department.

10. DISPOSITION OF ADVANCE PAYMENT

In the event of termination of this Agreement for any reason, the unused advance payment shall become the exclusive property of the Department. Any rights the Buyer may otherwise have, shall be forfeited.

11. WATER QUALITY

The Department makes no guarantee with respect to water quality or the suitability of the water for buyer's purposes.

12. PROTECTION OF ALL DANGEROUS WORKINGS

Buyer agrees to fence all dangerous workings and otherwise appropriately protect livestock, humans and property.

13. RIGHT TO LEASE RESERVED TO THE DEPARTMENT

The Department reserves the right to assign, lease and issue permits for the use of the premises both surface and subsurface to other persons for use or purposes not inconsistent with Buyer's right herein.

14. SUBJECT TO EMINENT DOMAIN OR CONDEMNATION PROCEEDINGS

If at any time during the duration of this Agreement, the whole or any part of the Premises shall be taken for any quasi-public or public purpose by any person, private or public corporation or by any governmental agency having authority to exercise the power of eminent domain or condemnation proceedings pursuant to any law, general, special or otherwise, this Agreement shall expire on the date when the Premises shall be taken or acquired, and all compensation and damages awarded for rights or interests in the Premises being condemned and all compensation and damages awarded for rights or interests in severance which may accrue to the remaining Premises shall be the sole property of the Department; however, in the event of such taking, advance payments prepared and unused by Buyer shall be returned to the Buyer to the extent, if any, that such taking makes it impossible for Buyer to enjoy the rights hereby purchased.

15. HOLD THE DEPARTMENT HARMLESS

The Buyer agrees to save, hold harmless and indemnify the Department and all of its agencies, officers and employees against any and all claims, costs, damages, expenses or charges arising out of,

incidental to, or resulting in any way from Buyer's operations pursuant to or in violation of this Agreement.

16. TERMINATION AND RESTORATION

Upon termination of this Agreement for any reason, Buyer agrees to leave the surface of the land in a reasonable condition as close to original conditions as possible, in accordance with safety practices in the area in which the Premises are located.

Well closures, temporary or permanent abandonment of wells shall comply with rules and regulations established by the Department of Water Resources and any special stipulations agreed to by this Department and Buyer.

17. PAYMENT FOR LOSS OR DAMAGE

Buyer shall promptly pay the Department (and lessees of the Department where applicable) for any loss to the Department or its lessees caused by the Buyer or by Buyer's servants, agents, employees or contractor to the premises, its grasses, forage, crops and improvements.

18. TERMINATION BY THE DEPARTMENT

Upon thirty (30) days prior to written notice to Buyer, the Department, shall have the right to terminate this Agreement at any time for the failure or neglect of the Buyer to perform any of the provisions hereof. Failure to make payments when due or failure to report timely and accurately shall be reason to terminate this Agreement immediately.

19. NOTICE OF AUTHORITY TO CANCEL THIS CONTRACT

This contract is subject to cancellation pursuant to A.R.S. §38-511.

20. BONDING

A performance or cash bond in the amount of \$ N/A will be required within thirty (30) days of the date of this Agreement. Assignment of this Agreement will not relieve the assignor of any obligation as principal under the bond, unless the Commissioner approves the posting of a replacement bond.

21. ATTORNEYS' FEES AND COST

In the event a dispute between the Department and Buyer results in legal action, the prevailing party shall have the right to recover reasonable attorneys' fees and costs incurred in the proceeding.

22. OTHER PROVISIONS

ADDITIONAL CONDITIONS

Department reserves the right to relinquish to the United States land needed for irrigation works in connection with a government reclamation project and to grant or dispose of rights of way and sites for canals, reservoirs, dams, power or irrigation plants or works, railroads, tramways, transmission lines or any other purpose or use on or over the Leased Land.

THIS DOCUMENT is submitted for examination and shall have no binding effect on the parties unless and until executed by the Department (after execution by the Buyer), and a fully executed copy is delivered to the Buyer.

IN THE EVENT OF A DISPUTE between the parties to this Agreement, it is agreed to use arbitration to resolve the dispute but only to the extent required by A.R.S. §12-1518; and, in no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department pursuant to statute or Department Administrative Rule.

STATE OF ARIZONA LAND DEPARTMENT
1616 W. ADAMS
PHOENIX, AZ 85007

RUN DATE: 2-sep-1998
RUN TIME: 11:08:22

LEASE NUMBER: 021-102153-00-000
AMENDMENT NUMBER: 0

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LAND#	LEGAL DESCRIPTION	C.C.	ACREAGE
4.5-N-08.0-W-29-13-031-8001	SESWSW SWSESW	0.0	20.000
TOTALS:		0.0	20.000

APPENDIX A
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PDC000689

IN WITNESS HEREOF, the parties hereto have signed this Water Agreement effective the day and year set forth previously herein.

STATE OF ARIZONA,
Arizona State Land Commissioner

By: Valeria Mendez 9-23-98
Date

(SEAL)

Eyrus Bagdad Copper Corp
Buyer Date

Carl Otonari 9/16/98
Buyer Date

VP/Manager
Buyer Date

PO Box 245
Address

Bagdad AZ 86321
City State Zip